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CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION, a California corporation, Plaintiff, v. SONOMA SOIL BUILDERS, INC., a California corporation, Defendant.	)	Case No. 4:15-cv-04880-KAW **NOTICE OF MOTION AND MOTION TO WITHDRAW AS COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEPHAN C. VOLKER; [PROPOSED] ORDER** Hearing Date: April 20, 2017 Time: 11:00 a.m. Courtroom: 4 Judge: Hon. Kandis A. Westmore

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on April 20, 2017, at 11:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Kandis A. Westmore, Magistrate Judge for the Northern District of California, Oakland Division, Courtroom 4, 1301 Clay Street, 3rd Floor, Oakland, California 94612-5212, Stephan C. Volker of the Law Offices of Stephan C. Volker will and hereby does respectfully seek leave of this Court to withdraw as counsel for plaintiff California Environmental Protection Association ("CEPA").

This motion seeks leave of Court to withdraw as counsel for plaintiff CEPA. It is made pursuant to Civil Local Rule 11-5(a) and in compliance with Rule 3-700 of the California Rules of Professional Conduct. It is made on the grounds that there has been an irreconcilable breakdown in the attorney-client relationship between CEPA and its counsel, and ethical considerations require withdrawal. It is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and

Authorities and Declaration of Stephan C. Volker in support thereof, and any evidence that may be presented at the hearing on this motion.

Dated: March 9, 2017

LAW OFFICES OF STEPHAN C. VOLKER

By: *s/Stephan C. Volker*
Stephan C. Volker
Attorney for Plaintiff
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF

Civil Local Rule 11-5 provides that "[c]ounsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client, and to all other parties who have appeared in the case." In accordance with this rule, the undersigned counsel has given written notice to the client and the defendant as documented in the following Declaration of Stephan C. Volker.

Federal district courts in California follow the California Rules of Professional Conduct in reviewing motions by counsel to withdraw. *See*, *e.g.*, *Page v. Stanley*, 2014 WL 2477248, 2 (C.D. Cal. June 2, 2014) (citing *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 591 and *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136). Rule 3-700(c) of the California Rules of Professional Conduct provides that an attorney may request permission to withdraw if the client "breaches an agreement or obligation to [its counsel] as to expenses or fees," or if the client engages in "other conduct [that] renders it unreasonably difficult for [its counsel] to carry out the employment effectively," such as a client's failure to communicate with his attorney and to provide information necessary to effectively prosecute the case. Cal. Rules of Professional Conduct, Rules 3-700(C)(1)(f), 3-700(C)(1)(d). Because an attorney may not ethically divulge the substance of the attorney-client communications leading to the need to withdraw, "ordinarily it will be sufficient to say only words to the effect that ethical considerations require withdrawal or that there has been an irreconcilable breakdown in the attorney-client relationship." California State Bar Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2015-192, pp. 1, 10.

As documented in the accompanying Declaration of Stephan C. Volker, three grounds warranting counsel's withdrawal from representation of CEPA are present here. First, there has been an irreconcilable breakdown in the attorney-client relationship preventing counsel from discharging its responsibilities to represent CEPA effectively in the prosecution of this matter. Second, and relatedly, ethical considerations require withdrawal of counsel. Third, there has been a breach of the client's agreement with counsel as to reimbursement of expenses. All three grounds prevent counsel from continuing its representation.

As further documented in the accompanying Volker Declaration, counsel has afforded CEPA ample opportunity to find substitute counsel, commencing with counsel's notification of CEPA of counsel's intent to withdraw as counsel on December 1, 2016. Counsel is informed that CEPA has not secured alternate counsel despite being afforded over three months' time to do so.

Although CEPA has refused to consent to counsel's withdrawal from this case, withdrawal is essential because CEPA's conduct has made it unreasonably difficult for counsel to carry out its duties in this matter.

Accordingly, there are multiple bases under Rule 3-700(C) for withdrawal of counsel from CEPA's representation in this matter. Because the undersigned counsel cannot effectively represent CEPA's interests under the circumstances documented below, counsel respectfully requests that this Court grant this motion for leave to withdraw as counsel for CEPA in this matter.

Dated: March 9, 2016 LAW OFFICES OF STEPHAN C. VOLKER

By: *s/Stephan C. Volker*
Stephan C. Volker
Attorney for Plaintiff
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

DECLARATION OF STEPHAN C. VOLKER

I, STEPHAN C. VOLKER, hereby declare:

1. I am an attorney at law, licensed in California, and admitted to practice before this Court. I am the owner and manager of the Law Offices of Stephan C. Volker, and counsel for plaintiff California Environmental Protection Association ("CEPA"). I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and would competently testify to those facts.

2. CEPA is a California corporation whose mailing address is 1275 Fourth Street, Box 141,

Santa Rosa, California, 95404. Its President is Gerard Duenas, who has served as my sole point of contact for CEPA. The last known email addresses I have for Mr. Duenas are ucantwo@gmail.com and calenvproassn@yahoo.com.

3. On February 3, 2016, CEPA retained my law firm to represent it in this action. In that Representation Agreement, CEPA agreed to reimburse our firm for approved ongoing case costs within 30 days of counsel's presentation of such costs to CEPA, up to a stated limit. Despite being presented with monthly statements for costs at the end of each month over the past 12 months, CEPA has failed to discharge its duties under this requirement of our Representation Agreement.

4. During the course of our representation of CEPA it has been necessary to contact Mr. Duenas periodically for the purpose of securing information essential to the prosecution of this action, including the names, addresses and contact information for members of the CEPA Board of Directors, the names of CEPA members harmed by the defendant's alleged violations of the Clean Water Act, identification of evidence including documents and witnesses essential to compliance with the requirements of Rule 26(a)(1) of the Federal Rules of Civil Procedure regarding "Initial Disclosure" of such information, and provision of information essential to the exchange of potential terms of settlement with defendant as required by this Court's rules respecting Alternative Dispute Resolution, ADR Local Rule 2-3 et seq.

5. Despite repeated attempts by our firm to secure information essential to discharge our duties under the foregoing Federal Rules of Civil Procedure and ADR Local Rules, we have been unable to secure prompt, accurate and complete information from Mr. Duenas. Applicable Rules of Professional Conduct, including Rule 3-100 of the California Rules of Professional Conduct, and Business and Professions Code section 6068(e), forbid disclosure of further details of these shortcomings.

6. As a consequence of these communication failures our firm has experienced with CEPA, we are unable to continue to represent it in this proceeding. On December 1, 2016, I informed Mr. Duenas by phone that these failures to engage in accurate, prompt and complete communication rendered it unreasonably difficult for my firm to carry out our representation of CEPA effectively in this proceeding and accordingly, I would request withdrawal from continued representation of CEPA unless

Mr. Duenas promptly substituted other counsel to represent CEPA in this matter. Mr. Duenas failed to find substitute counsel in response to my request. On December 29, 2016, by letter mailed and emailed on that date to CEPA's known mail and email addresses as listed above, I again reminded Mr. Duenas that our firm would withdraw as CEPA's counsel unless he promptly substituted other counsel to represent CEPA in this proceeding, and that because CEPA is a corporation, it could not appear *in propria persona* and would need to secure substitute counsel. My letter notified CEPA of the detailed reasons compelling our withdrawal, which reasons I cannot disclose in this declaration due to ethical considerations.

7. On January 16, 2017, Mr. Duenas responded to my repeated requests that he find substitute counsel lest our firm file this motion to withdraw. Although I cannot disclose the contents of Mr. Duenas' letter, I can affirm that CEPA declined to assent to our withdrawal as counsel, that CEPA failed and refused to substitute new counsel for our firm, and that the communication failures necessitating this motion to withdraw have not been rectified.

8. On March 9, 2017 I gave written notice to counsel for the defendant in this matter that our firm would be filing this motion to withdraw as counsel for plaintiff.

9. Due to the foregoing circumstances among others, there has been an irreconcilable breakdown in the attorney-client relationship between our firm and CEPA necessitating our withdrawal from further representation of CEPA in this matter.

I declare under penalty of perjury that the foregoing facts are true and correct, and that this declaration was executed on March 9, 2017 in Berkeley, California.

By: *s/Stephan C. Volker*
Stephan C. Volker
Attorney for Plaintiff
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

[PROPOSED] ORDER

Good cause appearing from the foregoing motion and its supporting documentation, counsel's motion is GRANTED.

IT IS SO ORDERED.

Dated: ______________________ ______________________________

HON. KANDIS A. WESTMORE
MAGISTRATE JUDGE

PROOF OF SERVICE

I, Stephan C. Volker, My business address is the Law Offices of Stephan C. Volker, 436 14th Street, Suite 1300, Oakland, California 94612.

On March 9, 2017 I served the following document described as

NOTICE OF MOTION AND MOTION TO WITHDRAW AS COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEPHAN C. VOLKER; [PROPOSED] ORDER

by electronic filing with the Clerk of the Court using the CM/ECF system, which sends notification of such filing to the email addresses registered in the above entitled action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 9, 2017

/s/ *Stephan C. Volker*
STEPHAN C. VOLKER
Attorney for Plaintiff